

Message Text

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TAGS: CASC (MEMOREX VERSUS IBM) GW

SUBJ: DEPOSTION IN TREBLE DAMAGES CORPORATE LITIGATION

1. ACCORDING TO ATTORNEYS FOR BOTH SIDES WHO FIRST ADVISED NOVEMBER 13, ILC PERIPHERALS LEASING CORP. AND MEMOREX CORP. ET AL ARE SUING INTERNATIONAL BUSINESS MACHINES CORP. 4 RE IBM PERIPHERAL EDP DEVICES IN ANTITRUST LITIGATION. CASE NUMBERS ARE C-73-2239-RM; C-73-2238-RM; AND MOL NO. 163-RM. NORTHERN DISTRICT OF CALIFORNIA, ACCORDING TO ATTORNEYS FOR BOTH SIDES, HAS SENT COMMISSION SIGNED BY JUDGE RAY MCNICHOLS DATED NOVEMBER 10, 1975 AUTHORIZING DEPOSITION OF IBM WITNESS NOVEMBER 14; DR. LOTHAR SPARBERG OF IBM ON NOVEMBER 24; AND F. ALBRECHT OF IBM ON DECEMBER 2. ONLY PROBLEM FORESEEN IN ORAL TESTIMONY IS THAT COMMISSION TEXT (FURNISHED BY ATTORNEYS) AUTHORIZES EXAMINATION AT LOCATION DESIGNATED BY DEFENDANT. SO LONG AS THIS DONE ON PREMISES OF CONSULATE GENERAL, AND PROVIDED THEY CONTINUE TO FURNISH MUTUALLY SATISFACTORY QUALIFIED COURT REPORTER AND INTERPRETER, THIS PART OF DEPOSITION SHOULD POSE NO UNUSUAL DIFFICULTIES.

2. HOWEVER, ATTORNEYS FOR PLAINTIFFS STATE THAT THEY WISH TO EXAMINE SOME 700,000 IBM DOCUMENTS IN STUTTGART, COPYING AND TAKING BACK ON THE ORDER OF 50,000 OF THEM. AT 3000 PER CUBIC FOOT THERE IS CLEARLY LOGISTICAL PROBLEM, PARTICULARLY WHEN VIEWED IN THE LIGHT OF GERMAN SENSITIVITIES TO TAKING DEPOSI-
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TIONS OUTSIDE CONSULAR PREMISES. AS EMBASSY CONFIRMED

IN PFUND-PRICE TELECON NOVEMBER 13 AND EPARTMENT
CONFIRMED IN BOYLAN-PRICE TELECON SAME DATE, EMBASSY
AND EPARTMENT SHARE THESE CONCERNS BASED UPON PAST
CASES. GERMANS, LIKE THEIR SWISS AND AUSTRIAN JUDICIAL
COLLEAGUES, HAVE IN PAST CASES SEEN DEROGATION TO THEIR
SOVEREIGNTY IN SUCH ACTS AS APPEAR IN DRAFT PRESENTED
OF JUDGE MCNICHOLAS' ORDER, WHICH READS: "YOU ARE
ALSO HERBY AUTHORIZED TO CONDUCT OR OVERSEE THE PRO-
DUCTION OF IBM DOCUMENTS AT SINDELFINGEN STRASSE 68,
BOEBLINGEN, GERMANY COMMENCING NOVEMBER 17, 1975 AND
ANY TESTIMONY RELATING THERETO; TO REDUCE EACH OF THE
ABOVE DEPONENT'S RESTIMONY TO WRITING, BY A PERSON
UNDER YOUR DIRECTION AUTHORIZED TO TAKE STENOGRAPHIC
TRANSCRIPTS IN GERMANY OR IN THE UNITED STATES, AND
TO MARK UP SUCH BOOKS, PAPERS, OR OTHER ARTICLES THAT
SAID WITNESS MAY PRIDUCE OR IDENTIFY AS PLAINTIFF'S
EXHIBITS OR DEFENDANT'S EXHIBITS IN THE MANNER INDICATED
ON ORAL EXAMINATION; TO ANNEX SAID TESTIMONY HERTO,
CLOSE THE SAME UNDER YOUR SEAL AND MAKE RETURN HEREOF
UNTO THIS COURT WITH ALL CONVENIENT SPEED."

3. ACCORDINGLY, REQUEST THAT YOU COMMUNICATE WITH
DEPARTMENT OF JUSTICE AND JUDGE AND ADVISE:

A. WHETHER IT POSSIBLE TO AVOID SOVEREIGNTY ISSUE
BY ISSUANCE OF LETTERS ROGATORY FOR THIS CASE, AT LEAST
AS TO DOCUMENT PRODUCTION;

B. WHAT MANPOWER IS AVAILABLE TO ASSIST TWO CONSULAR
OFFICERS AT BUSY POST IN SUCH EXTENSIVE PRODUCTION OF
DOCUMENTS (POST AND INSPECTORS HAVE PREVIOUSLY ASKED
FOR PART-TIME SERVICES OF THIRD CONSULAR OFFICER);

C. HOW MUCH TO COLLECT IN ADVANCE UNDER TARIFF OF
FEES, OTHER THAN USUAL OFFICER AND STENOGRAPHIC CHARGES,
SO AS TO ENSURE DEPOSIT OF SUFFICIENT FUNDS TO COVER
PRODUCTION AND SHIPMENT OF EXTENSIVE DOCUMENTS; AND

D. WHAT, IF ANY, ACTION AUTHORIZED RE DOCUMENTS,
OTHER THAN PRODUCTION AT CONSULATE GNERAL IN SMALL
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NUMBERS WHICH MAY BE PUT IN POUCH. POST PLANS NOT TO
PROCEED IN CONNECTION WITH OTHER THAN SMALL DOCUMENTARY
PRODUCTION ON PREMISES UNTIL AUTHORIZED BY DEPARTMENT
OR EMBASSY;

E. WHEN WE MIGHT EXPECT TO RECEIVE COMMISSION SIGNED
BY JUDGE AND FORWARDED BY DEPARTMENT. JENKINS

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